



In re Application of :
Marco Zuniga et al. :
Serial No. 09/475,713 : **DECISION ON PETITION**
Filed: December 30, 1999 : **UNDER 37 CFR 1.144**
For: **Switching Regulator With Multiple Power** :
Transistor Driving Voltages

#18

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This is a decision on the petition filed July 26, 2001, under the provisions of 37 CFR 1.144. Petitioner requests review and withdrawal of the restriction requirement, as made final, in the Office action mailed September 11, 2000.

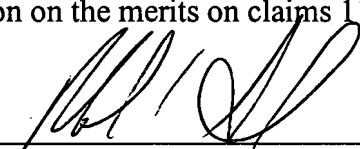
The petition is **granted**.

Restriction in accordance with the provisions of 37 CFR 1.142(a) may be required if two or more independent and distinct inventions are claimed in a single application. MPEP Section 806.04 sets forth the criteria for such a restriction requirement and states, in pertinent part:

1. Two different combinations, not disclosed as capable of use together, having different modes of operation, different functions or different effects are independent. An article of apparel such as a shoe, and a locomotive bearing would be an example. A process of painting a house and a process of boring a well would be a second example.

A review of the restriction requirement as proposed by the Examiner establishes that the requirement cannot be sustained. Claims 1-10 and 15-18 in Group I, and claims 11-14 in Group II are not independent and distinct inventions. They are, in fact, the same invention but of different scope. Independent claims 1 and 11 are both readable on the Fig. 1 embodiment of the present application. Claim 1 claims both transistors 40 and 42 while claim 11 only claims the transistor 40. Since both independent claims 1 and 11 are "open-ended", using the terminology "comprising", they are directing to the same invention but with different scope instead. Accordingly, notwithstanding the detailed reasoning advanced by the Examiner, the restriction requirement must be withdrawn.

This application is being forwarded to the Examiner for appropriate action, including an action on the merits on claims 11-15 in due course.


Richard Seidel, Group Director
Examining Group 2830/40